S.B.Civil Writ Petition No.6413/2007
Surendra Kumar & Ors.
vs
District Judge, Churu & Ors.

Date of order : 15.11.2007.

HON'BLE MR. PRAKASH TATIA, J.

Ms.Bita Sipani, for the petitioners.
Mr.Sanjay Singh, for the respondents.

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Heard learned counsel for the parties.

The petitioners filed suit for injunction in time earlier and for same property, the non-petitioners filed the suit for possession of the same property.

The petitioners prayed that the proceedings of the subsequently filed suit may be stayed under Section 10 of the CPC. The trial court observed that in the suit filed by the non-petitioners, the question of title is involved whereas in the suit no.39/2002 filed by the petitioners the issue of injunction alone is there and, therefore, proceedings of the subsequently filed suit cannot be stayed.

Learned counsel for the petitioners submitted that in the suit no.39/2002 though filed earlier, but issues have not yet been framed, but from the pleadings it is clear that the issue involved between the parties in two suits are the same and there may be two contradictory decrees in case, there will be

separate trial of two suits.

Learned counsel for the respondents vehemently submitted that in the suit filed by the petitioners, a decree of injunction only can be passed which may allow the non-petitioners to opt for due process of law for evicting the petitioners and, therefore, there will be no conflict in two decrees. It is also submitted that in alternate the two suits may be consolidated.

It appears that for the same property, same parties are litigating, one is seeking injunction and another is seeking possession and, therefore, in view of the facts of the case, it will be appropriate to consolidate two suits as in the earlier filed suit, yet issues have not been framed and in view of the fact that there may be two conflict decrees, one for injunction and another for possession, which cannot be permitted, therefore, it is appropriate to consolidate two suits.

In view of th above, the writ petition of the petitioners is disposed of and the civil original suit no.39/2002 is withdrawn from the court of Civil Judge (Jr.Div.) Sardarshahar and is hereby transferred to the court of higher jurisdiction where the present suit no.5/2003 is pending i.e., the court of District Judge, Churu. Both the suits are consolidated and the learned District Judge, Churu

may framed the consolidated issues and proceed with the trial of the two suits.

(PRAKASH TATIA), J.

c.p.goyal/-